Patent
Attorney's Docket No. 330501-00002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	) Examiner: **J. Mooneyham**
	)
Pasquale A. Patullo, et al.	) Group Art Unit: **3629**
	)
Application No.: **09/828,437**	) Appeal No. _____
	)
Filed: **April 6, 2001**	) Confirmation No.: **6173**
	)
For: **RESERVATION SYSTEM**	)
	) Date: **April 7, 2006**

APPELLANT'S BRIEF ON APPEAL UNDER 37 C.F.R. §1.191 and §§41.30, 31, 33, 35, and 37.

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal is from the decision of the Patent Examiner dated January 12, 2006, finally rejecting Claims 1-28, which are reproduced in Appendix A to this Appeal Brief.

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I. Real Party in Interest

The entire interest in the present application, and the invention to which it is directed, is assigned to VRL International c/o Ansbacher House, as recorded in the Patent and Trademark Office at Reel 0117249, Frame 0446.
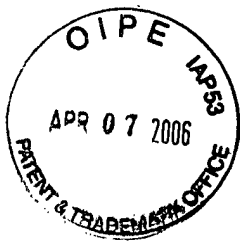
II. Related Appeals and Interferences

The Appellants' legal representative and assignee do not know of any other appeals or interferences which will directly affect, or be directly affected by, or have a bearing on the Board's decision in this Appeal.

III. Status of Claims

The present application contains claims 1-28, all of which are currently pending. Claims 1-28 form the basis for this Appeal.

IV. Status of Amendments

No amendments or responses were filed subsequent to final rejection.

V. Summary of the Invention

The present invention relates to a computer system for making travel arrangements, and more particularly, to a computerized reservation system. [*See* present application, page 1, lines 6-8.]

Existing computerized travel arrangement system suffer from serious drawbacks. For example, existing computerized travel arrangement system generally require too many manual steps, and/or require payment(s) prior to confirmation of reservations. Further still, prior art

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computerized travel arrangement systems did not differentiate between direct clients and travel agents. [*See* present application, page 1, lines 11-19.]

Therefore, a reservation system for making travel arrangements via a computer system that can differentiate between direct customers and travel agents is provided. The reservation system provides the user with a means for fast and efficient pricing of desired travel arrangements, and convenient booking of the same. [*See* present application, page 20.] Differentiating between direct clients and travel agents benefits both classes of users. For example, as FIG. 1 illustrates, a direct client identified as such is presented with a direct client price quote display, and then given an opportunity to provide information regarding children. It is important to do this early in the travel arrangement process, because many resorts/travel destinations do not accept children. Benefits to travel agents include providing information early in the travel arrangement process regarding what commissions are available. [*See* present application, page 4, lines 1-12.]

Referring to Figure 12 of the present application, a system for making on-line reservations according to an embodiment of the present invention is presented. In Figure 12, the system comprises a personal computer 100 used by a direct consumer to interface with web server 110, that provides access to a request form applicable to a direct consumer (or client). Also shown in Figure 12 is a travel agent that is presented access to a request form applicable to a travel agent through use of a personal computer and the web server 110. Web server 110 communicates with resort/airfare database 120, which stores several tables of data. This information can include closeout information (resort name, accommodations, start and end dates), gateway information (airport gateways), logging data (number of price quotes requested and number of reservations requested), referral information, as well as other information pertaining to airfare data (published rates, bulk rates, bartered rates, among others), and other information related to resorts, cruises and hotels, among other types. [*See* present application, page 2, lines 6, through page 3, line 7.]

The system for making on-line reservations according to an embodiment of the present invention as illustrated in Figure 12 further comprises a polling workstation 140, flight data

server 130, and central reservation system 150. Central reservation system 150 comprises a travel agent database and reservation database. The travel agent database includes information pertaining to travel agents, including, but not limited to, travel agency identification numbers, address and contact information, consortiums and group affiliations, and their commissions levels, bonus levels point program levels and passwords. Flight data server 130 represents an external computer network such as Sabre®, WorldSpan® or Amadeus®. Polling workstation 140 polls for text files from web server 110, wherein this text file includes information from airfare database 120. This information can then be transferred to flight data server 130. [*See* present application page 13, lines 8-20.]

Figure 1 illustrates a method for making on-line reservations according to an embodiment of the present invention. According to this method, the user is first identified as either a direct client or a travel agent. Upon identifying themselves as a travel agent (or agency), and wherein the system confirms them to be a travel agent (via an identification number), a travel agent price quote request display is presented to the user (travel agent). Alternatively, if the user is a direct client, a direct client price quote request display is presented to the user, following which it is determined (in either case; i.e., if the user is a direct client or travel agent), whether or not children are allowed at the desired travel destination (or resort). If no children are allowed, the method provides, for direct clients, a direct client price quote results display, a direct client reservation booking request display, and a direct client reservation booking confirmation display, whereupon the direct client user has made a resort reservation. Alternatively, if the user is a travel agent, and no children are allowed, the method provides, for travel agents, a travel agent price quote results display, a travel agent reservation booking request display, and a travel agent reservation booking confirmation display, whereupon the travel agent user has made a resort reservation for the travel agent's client. [*See* present application, page 3, line 22, through page 4, line 12.]

According to a first embodiment of the present invention, as recited in independent claim 1, a reservation system for making travel arrangements upon request by a user is presented. The system comprises means for determining whether the user is a direct customer or a travel agent;

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means for receiving travel parameters associated with a desired travel option; means for generating a listing of one or more travel arrangements in accordance with the travel parameters, said listing including pricing information associated with each respective travel arrangement; and means for displaying the listing of the one or more travel arrangements. [*See* present application, Figure 12, page 3, line 22 through page 4, line 12, and page 12, line 6, through page 14, line 10.]

Independent claim 1 of the present application recites the feature of "means for determining whether the user is a direct customer or a travel agent." For purposes of illustration, the structure described in the specification as corresponding to the claimed function can be shown as, for example, a web server, such as, for example, web server 110 illustrated in Figure 12, and described at page 3, line 22 through page 4, line 12, and page 12, line 6, through page 14, line 10.

Independent claim 1 of the present application further recites the feature of "means for receiving travel parameters associated with a desired travel option." For purposes of illustration, the structure described in the specification as corresponding to the claimed function can be shown as, for example, a web server, such as, for example, web server 110 illustrated in Figure 12, and described at page 3, line 22 through page 4, line 12, and page 12, line 6, through page 14, line 10.

Independent claim 1 of the present application further recites the feature of "means for generating a listing of one or more travel arrangements in accordance with the travel parameters, said listing including pricing information associated with each respective travel arrangement." For purposes of illustration, the structure described in the specification as corresponding to the claimed function can be shown as, for example, a web server, such as, for example, web server 110 illustrated in Figure 12, and described at page 3, line 22 through page 4, line 12; a database containing resort and airfare data, such as, for example, resort/airfare database 120, illustrated in Figure 12, and described at page 12, line 6, through page 14, line 10; a server capable of accessing flight data, such as, for example, flight data server 130, illustrated in Figure 12, and described at page 12, line 6, through page 14, line 10; a workstation for accessing text information, such as, for example, polling workstation 140, illustrated in Figure 12, and

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described at page 12, line 6, through page 14, line 10; and a reservation system, such as, for example, central reservation system 150, illustrated in Figure 12, and described at page 12, line 6, through page 14, line 10.

Independent claim 1 of the present application further recites the feature of "means for displaying the listing of the one or more travel arrangements." For purposes of illustration, the structure described in the specification as corresponding to the claimed function can be shown as, for example, a personal computer, such as, for example, personal computer 100, illustrated in Figure 12, and a display, such as the displays illustrated in Figures 5, 6A, 6B, 7, 8A, 8B, 9, 10, and 11, and described at page 3, line 22 through page 4, line 12, page 5, lines 7-15, page 6, line 7 through page 9, line 23, and page 10, line 25 through page 12, lines 5.

Dependent claim 3 recites the feature of a "means for displaying images associated with the plurality of room accommodations, in response to selection of said plurality of room accommodations." For purposes of illustration, the structure described in the specification as corresponding to the claimed function can be shown as, for example, a personal computer and several displays, such as, for example, a personal computer 100 and price quote result display, and detailed accommodation displays, illustrated in Figures 2, 5, and 8A, 8B, respectively, and described at page 3, line 22 through page 4, line 12, and page 6, line 7 through page 7, line 2.

Dependent claim 7 recites the feature of a "means for accessing an associated computer network to determine the availability of seating, after selection of a listed travel arrangement." For purposes of illustration, the structure described in the specification as corresponding to the claimed function can be shown as, for example, a reservation/airfare database and flight data server, such as, for example, reservation/airfare database 120 and flight data server 130, illustrated in Figure 12, and described at page 12, line 6 through page 13, line 10, and further can be shown to include a personal computer and web server, such as, for example, personal computer 100 and web server 110 illustrated in Figure. 12 and described at page 12, line 6 through page 13, line 10, and can further be shown to be described in regard to Figure 13, page 13, line 21, through page 14, line 10.

Dependent claim 8 recites the feature of a "means for displaying one or more flight options after the associated computer network is accessed." For purposes of illustration, the structure described in the specification as corresponding to the claimed function can be shown as, for example, a reservation/airfare database and flight data server, such as, for example, reservation/airfare database 120 and flight data server 130, illustrated in Figure 12, and described at page 12, line 6 through page 13, line 10, and further can be shown to include a personal computer and web server, such as, for example, personal computer 100 and web server 110 illustrated in Figure 12 and described at page 12, line 6 through page 13, line 10, and can further be shown to be described in regard to Figure 13, page 13, line 21, through page 14, line 10.

Dependent claim 10 of the present application further recites the feature of "means for displaying price information and adjusted price information associated with the travel arrangements." For purposes of illustration, the structure described in the specification as corresponding to the claimed function can be shown as, for example, a personal computer, such as, for example, personal computer 100, and a server, such as web server 110, illustrated in Figure 12, and a display, such as the displays illustrated in Figures 5, 6A, 7, 9, 10, and 11, and described at page 3, line 22 through page 4, line 12, page 5, lines 7-15, page 6, line 7 through page 9, line 23, and page 10, line 25 through page 12, lines 5.

Dependent claim 12 of the present application recites the feature of "means for generating a confirmed travel arrangement without receipt of payment for the travel arrangement, the confirmed travel arrangement including information relating to a net amount of money due from the user, wherein when the user is a travel agent, the net amount of money due is reduced by an amount of an agency commission." For purposes of illustration, the structure described in the specification as corresponding to the claimed function can be shown as, for example, a web server, such as, for example, web server 110 illustrated in Figure 12, and described at page 3, line 22 through page 4, line 27, a display as illustrated in Figure 7, and described at page 10, line 25, through page 11, line 24, and page 12, line 6, through page 14, line 10.

According to another aspect of the present invention, as recited in, for example, independent claim 13, a method for making travel arrangements upon request by a user of a computer network is presented. The method comprises the steps of determining whether the user is a direct customer or a travel agent; receiving travel parameters associated with a desired travel option; generating a listing of one or more travel arrangements in accordance with the travel parameters, said listing including pricing information associated with each respective travel arrangement; and displaying the listing of the one or more travel arrangements. [*See* present application, page 3 line 22, through page 4, line 27 and page 5, lines 16-20.]

According to still another aspect of the present invention, as recited in, for example, independent claim 25, a reservation system for making travel arrangements upon request by a user is presented. The system comprises a first data processing system for determining whether the user is a direct customer or a travel agent, receiving travel parameters associated with a desired travel option, generating a listing of one or more travel arrangements in accordance with the travel parameters, said listing including pricing information associated with each respective travel arrangement, and displaying the listing of the one or more travel arrangements; and at least one database for storing a plurality of the travel arrangements and the associated pricing information. [*See* present application, page 12, line 6, through page 14, line 10.]

According to another aspect of the present invention, as recited in, for example, independent claim 28, a method for making travel arrangements upon request by a user of a computer network is presented. The method comprises the steps of determining whether the user is a direct customer or a travel agent, receiving travel parameters associated with a desired travel option, generating a listing of one or more travel arrangements in accordance with the travel parameters, said listing including pricing information associated with each respective travel arrangement, displaying the listing of the one or more travel arrangements, generating a confirmed travel arrangement without receipt of payment for the travel arrangement, the confirmed travel arrangement including information relating to a net amount of money due from the user, wherein when the user is a travel agent, the net amount of money due is reduced by an amount of an agency commission, and forwarding, to a tour operator's reservation system, the

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confirmed travel arrangement. [*See* present application, page 3 line 22, through page 4, line 27 and page 5, lines 16-20.]

Thus, each of the four independent Claims (1, 13, 25, and 28) includes a recitation corresponding to the determination of whether the user is a direct customer or a travel agent. This feature provides the present invention with the advantage that the reservation system can tailor the information to be provided in the listing based on whether the user is a direct customer or a travel agent. In particular, this feature enables the reservation system to take into account whether or not an agency commission will be paid. In addition, there may be other travel parameters whose price or availability may depend on whether the user is a direct customer or a travel agent. For example, there may be certain travel arrangements that are available only via travel agencies, such as certain cruises. As another example, there may be certain travel arrangements that will not afford an agency commission, so the pricing information provided to the user may be affected by whether or not the user is a travel agent.

VI.   Grounds of Rejection to be Reviewed on Appeal

The final Office Action presents two grounds of rejection for review in this Appeal:

1.   Claims 1-12, and 25-27 stand finally rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Lynch *et al.* (U.S. Patent No. 6,018,715, hereinafter "Lynch").

2.   Claims 1-28 stand finally rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the combination of Jones *et al.* (U.S. Published Patent Application No. 2001/0156661; hereinafter "Jones") in view of Among *et al.* (U.S. Published Patent Application No. 2003/0110063; hereinafter "Among").

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VII.   Arguments

A.   Summary of Arguments

For the convenience of the Board, a summary of Appellants' arguments in response to the aforementioned grounds of rejection is provided below. The following arguments are discussed in greater detail in Sections VII.B and VII.C.

1.   Rejection of Claims 1-12 and 25-27 Under 35 U.S.C. §102(b) as Allegedly Being Anticipated By Lynch.

These claims recite the feature of, for example, means for determining whether the user is a direct customer or a travel agent, as recited in at least independent claim 1, among others. Lynch fails to disclose at least the claim feature of means for determining whether the user is a direct customer or a travel agent. The Examiner attempts to show that decision engine (16) of Fig. 3 (106), as disclosed by Lynch column 5, lines 31-35, teaches the Appellants' claimed feature, but is unsuccessful in that Lynch teaches determining the identity of the traveler, the business entity that employs the traveler (if applicable), and the travel agency of which the individual is a customer (if applicable). Lynch, in other words, *presumes* the user is a travel agent and that the traveler is associated with the travel agent, instead of determining whether the user is a direct customer or a travel agent.

2.   Rejection of Claims 1-28 Under 35 U.S.C. §103(a) as Allegedly Being Unpatentable Over Jones In View of Among.

These claims recite the feature of, for example, means for determining whether the user is a direct customer or a travel agent. The Examiner admits that Jones fails to disclose at least the claim feature of determining whether the user is a direct customer or a travel agent. Without support of any kind, the Examiner asserts that Among discloses the feature of determining whether the user is a direct customer or a travel agent. The Examiner asserts that because Among discloses a step of determining who the user is, determining if a passenger is identified as being qualified for special pricing and automatically applying a rate if qualified, as well as

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other irrelevant features, that Among therefore discloses the step of determining whether the user is a direct customer or a travel agent. Furthermore, the Examiner has made no showing, whatsoever, of a motivation to combine based on actual, specific evidence.

B.   Rejection of Claims 1-12 and 25-27 Under 35 U.S.C. §102(b) as Allegedly Being Anticipated By Lynch.

It is respectfully submitted that Lynch fails to disclose the claim feature of means for determining whether the user is a direct customer or a travel agent, as recited in, for example, independent claim 1 of the present application.

1.   The Lynch Patent

As understood by the Appellants, Lynch is directed towards an automated travel planning system. The system includes a database which stores information relating to each individual traveler and business entity customer of a travel agency and also information relating to the travel agency itself. This information may include, for example, data concerning the frequent flyer/renter programs in which a traveler participates, smoking and seating preferences for a traveler, preferred travel vendors of a business entity, restrictions on fare classes (e.g., business or coach classes only) imposed by a business entity on its employees, and promotions available to a travel agency. When travel request information is received from a specific customer (individual and/or business entity) of the travel agency, the system automatically retrieves information relating to the customer from the database and also information relating to the travel agency. The system of Lynch preferably uses the retrieved information to determine a travel plan that is satisfactory to the individual customer who is traveling, the business traveler customer which employs the individual, and the travel agency. [*See* Lynch, Abstract.]

2.   Lynch Fails to Disclose Determination of Whether User Is a Direct Customer or a Travel Agent of Independent Claims 1 and 25.

Regarding the 35 U.S.C. §102(b) rejections, it is well known that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814

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F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) [emphasis added]. The Appellants respectfully submit that Lynch does not disclose all of the features of the present invention. In particular, Lynch fails to disclose the claim feature of the means for determining whether the user is a direct customer or a travel agent, as recited, for example, in claim 1 of the present application.

Independent claim 1 recites a reservation system for making travel arrangements upon request by a user. The system comprises means for determining whether the user is a direct customer or a travel agent, means for receiving travel parameters associated with a desired travel option; means for generating a listing of one or more travel arrangements in accordance with the travel parameters, said listing including pricing information associated with each respective travel arrangement, and means for displaying the listing of the one or more travel arrangements.

Independent claim 25 recites a reservation system for making travel arrangements upon request by a user. The system comprises a first data processing system for determining whether the user is a direct customer or a travel agent, receiving travel parameters associated with a desired travel option, generating a listing of one or more travel arrangements in accordance with the travel parameters, said listing including pricing information associated with each respective travel arrangement, and displaying the listing of the one or more travel arrangements, and at least one database for storing a plurality of the travel arrangements and the associated pricing information.

Thus, each of the independent claims 1 and 25 includes a recitation corresponding to the determination of whether the user is a direct customer or a travel agent. This feature provides the present invention with the advantage that the reservation system can tailor the information to be provided in the listing based on whether the user is a direct customer or a travel agent. In particular, this feature enables the reservation system to take into account whether or not an agency commission will be paid. In addition, there may be other travel parameters whose price or availability may depend on whether the user is a direct customer or a travel agent. For example, there may be certain travel arrangements that are available only via travel agencies, such as certain cruises. As another example, there may be certain travel arrangements that will

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not afford an agency commission, so the pricing information provided to the user may be affected by whether or not the user is a travel agent.

In contrast, Lynch does not disclose the claim feature of means for determining whether the user is a direct customer or a travel agent. Therefore, because each of independent Claims 1 and 25 recite the feature of determining whether the user is a direct customer or a travel agent, and because Lynch does not disclose this feature, Appellants submit that each of these claims is allowable over Lynch. On pages 2 and 3 of the January 12, 2000 Office Action (hereinafter the "Final Office Action"), Figs. 1 and 3, and column 5, lines 31-35 are cited as disclosing the claim feature of means for determining whether the user is a direct customer or a travel agent. The relevant disclosure from Lynch is repeated below:

> At block 106, in response to the travel request information, system 10 under the control of decision engine module 16 determines the identity of the traveler, the business entity which employs the traveler (if applicable), and the travel agency of which the individual is a customer (if applicable). Preferably, if the individual for whom travel arrangements are being made is an existing customer of the travel agency, the identities of the business entity and the travel agency are accessed automatically from the relational database when the name of the individual is input into system 10. Otherwise, if the individual is a new customer, system 10 may prompt the travel agent to input information relating to the individual and his/her employer, such as, for example, the name and address of the individual, the name and address of the individual's employer, any frequent flyer or renter programs in which the individual participates, any travel services vendors preferred by the employer, etc. This individual and business entity information can be stored in database 14 for future use.

Lynch, column 5, lines 31-49 (emphasis added).

And still further:

> Although the decision engine module 16 may determine the preferred travel plans for each of the individual traveler, the business entity, and the travel agency, not all of these preferences should be considered in every case. For example, if the individual

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> traveler is traveling for personal reasons, the <u>preferences of his or
> her employer should not be considered in the travel planning</u>.

Lynch column 5, lines 56-62 (emphasis added).

A careful reading of these passages shows that Lynch does not disclose the claim feature of means for determining whether the user is a direct customer or a travel agent. Step 106 of Fig. 3 of Lynch affirms this conclusion. In step 106, the system determines the traveler, business entity *and* agency associations. Nowhere does Lynch ever state that the system determines *whether* the user is a direct customer or a travel agency. Instead, Lynch's system presumes that the traveler is associated with a business entity. Then – and only then – does Lynch's system start differentiating the requirements of the user, business entity and travel agency. This is wholly different than the Appellants' claimed invention. At the outset, as recited in claim 1 (and claims 13 and 25), the system of the Appellants' claimed invention determines *whether* the user is a direct customer *or* a travel agent. By contrast, Lynch <u>presumes</u> that the user is a travel agent. Furthermore, there is no disclosure in Lynch to suggest that there is ever the case that an individual can use Lynch's system without the assistance of a travel agent. This is supported by the language found in column 5, lines 41-43: If the individual is a new customer, "system 10 may prompt <u>the travel agent</u> to input information relating to the individual and his/her employer . . ." [Lynch, column 5, lines 41-43 (emphasis added).] Also, "[w]hen travel request information is received from a specific customer (individual and/or business entity) <u>of the travel agency</u>, the system automatically retrieves information relating to the customer from the database <u>and also information relating to the travel agency</u>." [Lynch, Abstract (emphasis added).] Taken together, these passages suggest a system that <u>never</u> contemplates being accessed directly by an individual traveler, much less a need to determine whether the user is a direct customer *or* a travel agent. Because Lynch fails to disclose the claim feature of means for determining whether the user is a direct customer or a travel agent, as recited in independent claims 1, 13 and 25, Lynch cannot anticipate the Appellants' claimed invention. The Appellants respectfully submit, therefore, that because Lynch fails to disclose all the claim features of Appellants' claimed invention, the rejections of claims 1 and 25 under 35 U.S.C. §102(b) is in error and should be withdrawn.

Lynch also fails to disclose the recited claim feature of means for generating a listing of

one or more travel arrangements in accordance with the travel parameters, said listing including

pricing information associated with each respective travel arrangement. At page 3 of the Final

Office Action, the Examiner cites the decision engine module 16, and column 3, lines 16-21, as

disclosing a means for generating a listing of one or more travel arrangements in accordance

with the travel parameters, said listing including pricing information associated with each

respective travel arrangement. Lynch states that:

> In accordance with the preferred embodiment of the present
> invention, an automated travel planning system is preferably used
> to generate a recommended travel plan that balances between the
> preferences of a traveler, a business entity which employs the
> traveler (if applicable), and the travel agency making arrangements
> for the traveler. The travel plan may include, for example,
> recommendations for the travel service vendor (e.g., American
> Airlines, Delta Airlines, or United Airlines) which should be used,
> the fare class of the travel arrangements (e.g., first class, business
> class, or coach class), [and] seating preference (e.g., aisle or
> window), etc.

Lynch, column 2, lines 52-63 (emphasis added).

And further,

> Decision engine module 16 functions to receive travel request
> information, such as a travel itinerary, input into system 10 and, in
> response, determines a preferred travel plan for each of a traveler,
> a business entity employing the traveler (if applicable), and the
> travel agency. The decision engine module 16 can be further used
> to apply weighting values to each of the traveler's, the business
> entity's, and the travel agency's preferred travel plans. In addition,
> the decision engine functions to combine the weighted travel
> preferences to ultimately determine a recommended travel plan or
> policy that is "fair" to all parties. Decision engine module 16 may
> use fuzzy logic in its analysis.

Lynch, column 3, lines 14-28 (emphasis added).

As described in the foregoing passages, Lynch's system takes into account each of the

three entities' (i.e., traveler, business entity, and travel agent) requirements to generate three

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different travel plans. Then, it applies a weighting system "to ultimately determine a recommended travel plan . . ." Thus, the net result of Lynch's system is a single travel plan that includes information relating to travel service vendor, fare class, and seating preference – but **not** pricing information. By contrast, the present invention includes the feature of means for generating a listing of one or more travel arrangements in accordance with the travel parameters, said listing including pricing information associated with the one or more respective travel arrangements. Because Lynch fails to disclose a means for generating a listing of one or more travel arrangements in accordance with the travel parameters, said listing including pricing information associated with each respective travel arrangement as recited in independent claims 1, 13 and 25, Lynch does not anticipate the Appellants' claimed invention. The Appellants respectfully submit, therefore, for this additional reason, that the rejection of claims 1 and 25 under 35 U.S.C. §102(b) is in error and should be withdrawn.

Therefore, because each of independent claims 1 and 25 recite the feature of means for generating a listing of one or more travel arrangements in accordance with the travel parameters, said listing including pricing information associated with each respective travel arrangement, and because Lynch does not disclose this feature, the Appellants submit that each of these claims is allowable over Lynch. The Appellants respectfully request, therefore, that the rejection of claims 1 and 25 under 35 U.S.C. §102(b) be withdrawn.

Furthermore, because each of claims 2-12, 26, and 27 depends from one of the aforementioned independent claims, these dependent claims are allowable over Lynch, for at least the reasons discussed above with respect to the independent claims.

The Examiner asserts that "the Applicant argues that the system [of Lynch] never states that the user is a direct customer or a travel agency." [Final Office Action, page 21.] This assertion, however, reflects a fundamental misunderstanding of the Appellants' argument. The Appellants' argument was, and continues to be, is that "[n]owhere does Lynch ever state that the system determines *whether* the user is a direct customer or a travel agency." [Appellants' response of September 2, 2005 (hereinafter, the "Second Response"), page 18 (emphasis original).] The Examiner then further asserts that "given the broadest reasonable interpretation

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of a direct customer, can a traveler not be a direct customer?" [Final Office Action, page 21.] The Examiner misses the point completely. The claim feature in question is "determining whether the user is a direct customer or a travel agent." The Examiner apparently fails to appreciate that Lynch fails to disclose at least that particular claim feature.

3.   Lynch Fails to Disclose the Travel Parameters of Dependent
      Claims 2, 4-6, and 11

In regard to claims 2, 4-6, and 11, the Examiner admits that "Lynch does not explicitly discloses [sic] a system wherein the listing includes a plurality of room accommodations and pricing information, wherein said listing includes information relating to whether children are allowed." [Final Office Action, page 4, (emphasis added).] Therefore, because the Examiner admits that Lynch fails to disclose the recited claim elements of dependent claims 2 and 4, Lynch cannot anticipate the Appellants' claimed invention.

As justification for her anticipation finding, the Examiner states that "this data is determined to be non-functional descriptive data that is not functionally interrelated with the structure of the system," and that, therefore, "this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability." [Final Office Action, page 4 (emphasis added).] The Examiner cites *In re Gulack*, 703 F.2d 1381, 1385, 217 U.S.P.Q. 401, 404 (Fed. Cir. 1983) in support of this rationale.

The Examiner, however, offers no evidence or analysis as to what properly constitutes "non-functional descriptive data" that is "not functionally interrelated with the structure of the system," or why she believes the Appellants' claim features are "non-functional descriptive data," that "is not functionally interrelated with the structure of the system." Instead, the Examiner nakedly asserts that the Appellants' claim feature "*is determined to be*" non-functional descriptive data. The Appellants, however, respectfully submit that what the Examiner refers to as "descriptive data" is not at all "descriptive", as defined in *In re Gulack*, but instead further defines the structure of the system. The Court in *In re Gulack* found that printed material on a band had a functional relationship because the band supported the digits, and "there is an endless

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sequence of digits – each digit residing in a unique position with respect to each other in an endless loop. Thus, the digits exploit the endless nature of the loop." *In re Gulack*, at 405.

Similarly, there is a functional relationship between the travel parameters that include accommodation name, arrival date, departure date, departure location, and number of guests, and information relating to whether children are allowed at the named accommodation, as recited in dependent claims 2, 4-6, and 11, and the structure of the system of Appellants' claimed invention. The aforementioned travel parameter data is processed by the Appellants' system, and this reflects data stored in a format usable by the PCs 100 and web server 110. This data is analogous to the programming that creates a new machine. See, e.g., *In re Alappat*, 33 F.3d 1526, 1545 (Fed. Cir. 1994), and *In re Lowry*, 32 F.2d 1579, 1579 (Fed. Cir. 1994) ("the claims require specific electronic structural elements which impart a physical organization on the information stored in memory."). Similarly, as in *In re Lowry*, this travel parameter data imparts a physical organization to the reservation system as recited in claims 2, 4-6 and 11, because a listing is generated for one or more travel arrangements "in accordance with the travel parameters," and the listing "include[s] pricing information *associated* with each respective travel arrangement." Such a physical organization clearly constitutes a structural relationship, and as such cannot be "non-functional descriptive data."

As a result, because it is admitted at page 4 of the Final Office Action that the recited claim features of claims 2, 4-6 and 11 are not taught or suggested by Lynch, Lynch cannot anticipate these claims. Therefore, the Appellants respectfully submit that the rejection of claims 2, 4-6, and 11 under 35 U.S.C. §102(b) is in error and should be withdrawn.

Furthermore, the Examiner asserts that "an apparatus must be distinguished form [sic] the prior art in terms of structure rather than function alone . . . The system in Lynch is fully capable of processing and displaying this type of data as in indicated by the language *'the travel request information can include, for example,'* and the *etc.* at the end of the listing of services, indicating that the listing is not all inclusive." [Final Office Action, pages 4, 5 (emphasis original).]

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Once again, the Examiner admits that Lynch fails to disclose the features as claimed in dependent claims 2, 4-6, and 11. Instead, the Examiner merely suggests that Lynch is "fully capable" of "processing and supplying this type of data." Respectfully, the Appellants submit that a disclosure by a prior art reference that is merely *capable* of performing the same process, or *capable* of having the same structure, is simply not sufficient to support a finding that the reference anticipates such a claim, because such capability does not constitute a disclosure.

The Examiner, however, asserts that "[a] recitation of the intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art is capable of performing the intended use, then it meets the claim. The system in Lynch is fully capable of transferring data to a plurality of processing systems." [Final Office Action, pages 7, and 8 (emphasis added).] The Appellants respectfully submit, however, that while the Examiner correctly recites the holding of the Court in *Ex parte Masham*, 2 U.S.P.Q.2d 1647 (Bd. Pat. App. & Inter. 1987) (*see* MPEP §2214), the application by the Examiner is in error. In *Ex parte Masham*, the board found that "a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the *structural* limitations of that claimed." [*Id.* at 1648 (emphasis original).] The facts, however, of the Appellants position are distinguishable over *Masham*, because the prior art fails to satisfy the structural limitations of the present claims.

Appellants' claim language is functional language that defines the Appellants' invention by what it does. "In our view, there is nothing intrinsically wrong with the use of such a technique [that an attempt is being made to define something...by what it *does* rather than by that it is] in drafting patent claims. Indeed, we have even recognized in the past the practical *necessity* for the use of functional language. *In re Swinehart*, 439 F.2d 210, 212 (CCPA 1971) (emphasis original). "The real issue in any such case is not whether the recital is "functional" or "negative," but whether the recital sets definite boundaries on the patent protection sought – that is, whether those skilled in the relevant art can determine what the claim does or does not read on." *In re Barr*, 444 F.2d 588, 595 (CCPA 1971). The real issue, as the courts so aptly put it, is:

Can one of ordinary skill in the art of the present invention appreciate what is or is not covered by the Appellants' claims? The Examiner is attempting to derogate the Appellants' claim feature in the futile belief that she need not identify a disclosure of the feature(s) in the prior art. Such is not the case, however, and Appellants respectfully submit that Lynch fails to disclose all the structural limitations of claim 27 because Lynch does not teach the structural limitations of the second data processing system being a central reservation system, and the third data processing system being a flight data server. Just as in *In re Allappat*, wherein the claims comprised specific electronic structural elements which imparted a physical organization on the information stored in memory, so too does the central reservation information and flight data information impose a physical organization of data within each respective processing system in claim 27 of the Appellants' claimed invention.

4. Lynch Fails to Fully Disclose Means for Displaying as Recited in Claims 3 and 8-10.

In regard to claims 3 and 8-10, the Examiner states the following:

> The fact that the means for displaying displays images associated with a plurality of room accommodations or flight options, or an indication of a limited flight availability is data that is deemed non-functional descriptive data, not functionally interrelated with the structure. Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack, In re Lowry* (citations omitted, emphasis added).

Final Office Action, page 5 (emphasis added).

The Appellants respectfully note that the Examiner fails to assert that Lynch discloses any of the claim features of claims 3 and 8-10. At page 5 of the Final Office Action, the Examiner states that "Lynch discloses a means for displaying," but then impliedly admits that Lynch fails to disclose a means for displaying images, as recited in claims 3 and 8-10, by invoking the same argument that these recited features are "deemed non-functional descriptive data," and that the "system of Lynch is fully capable of displaying images" corresponding to the

claimed features. However, for the same reasons as those discussed above in reference to claims 2, 4-6 and 11, these assertions do not support a finding of anticipation.

Therefore, it is respectfully suggested that because the Examiner impliedly admits Lynch fails to disclose the features of claims 3 and 8-10, Lynch cannot anticipate these claims. Therefore, the Appellants respectfully submit that the rejection of claims 3 and 8-10 under 35 U.S.C. §102(b) is in error and should be withdrawn.

     5.   <u>Lynch Fails to Disclose a Database for Storing a Plurality of Travel Arrangements and Other Features of Claims 25</u>.

The Examiner asserts that "[t]he language 'for storing a plurality of the travel arrangements and the associated pricing information' is the intended use of the structure and does not distinguish the claimed apparatus from the prior art since the databases of Lynch store information relating to travel preferences and are fully capable of storing travel arrangements and pricing information." [Final Office, pages 5 and 6 (emphasis added).] Because the Examiner impliedly admits that Lynch fails to disclose a database for storing a plurality of the travel arrangements and the associated pricing information, Appellants respectfully submit that there is no anticipation of claim 25 for this additional reason. In response to the assertion made by the Examiner that Lynch is "<u>fully capable</u>" of storing travel arrangements and pricing information," the Appellants' arguments presented above regarding the insufficiency of this assertion for supporting a finding of anticipation apply equally here as well.

     6.   <u>Lynch Fails to Disclose a Second Data Processing System Being a Central Reservation System and Other Features of Claim 27</u>.

In regard to claim 27, it is respectfully submitted that Lynch fails to disclose either of the claim features of a second data processing system being a central reservation system, or a third data processing system being a flight data server. No specific reference is provided in the Final Office Action as to where Lynch allegedly teaches or suggests either of these features, and the Appellants respectfully submit that a careful reading of Lynch will show that there is no such disclosure. Therefore, since Lynch fails to disclose either of the claim features of a second data

processing system being a central reservation system, or a third data processing system being a flight data server, the Appellants respectfully submit that the rejection of claim 27 under 35 U.S.C. §102(b) is in error, and should be withdrawn.

> 7.   Appellants' Response to the Examiner's Assertion Regarding the
>   Scope of the Appellants' Claimed Invention.

The Final Office Action states that:

> The Applicant further states that the feature of determining
> whether the user is a direct customer or travel agent provides the
> invention with the advantage that the reservation system can tailor
> the information to be provide in the listing based on whether the
> user is a direct customer or a travel agent (page 17, second
> paragraph). For the applicant's invention to be able to do this, the
> applicant must incorporate this into the claim language. There is
> nothing in the claim language that suggest [sic] that the
> information that the user is a direct customer or a travel agent is
> used in the generation of the list. The claim language has the list
> generated in accordance with the travel parameters. The travel
> parameters are associated with the desired travel option. The
> applicant never uses the information of whether the user is a direct
> customer or travel agent in the claim language to generate the list.

Final Office Action, page 21 (emphasis added).

Again, the Examiner misses the point of the Appellants' discussion. The Appellants never asserted that the advantage of tailoring the information to be provided in the listing based on whether the user is a direct customer or a travel agent is a recited claim feature. Instead, Appellants argued that the recited claim feature of determining whether the user is a direct customer of a travel agent provides the invention with the tailoring advantage. In this way, Appellants demonstrated why the recited claim feature is an important aspect of the invention, that thereby patentably distinguishes it from the cited prior art.

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8.   Appellants' Response to the Examiner's Assertion Regarding the
      Use or Non-use of a Travel Agent to Make Travel Transactions.

The Examiner also states that: "[a]s for applicant's arguments on page 19 that there is no

disclosure in Lynch to suggest that there is ever the case that an individual can use Lynch's

system without the assistance of a travel agent, the Examiner's position is, even if this were to be

the case, the applicant's claim language does not preclude all of the transaction being made with

the assistance of a travel agent." [Final Office Action, page 22.] The Examiner's statement,

however, is not relevant to the question of whether Lynch discloses each and every recited claim

feature. Lynch discloses a system that never contemplates being accessed directly by an

individual traveler. Consequently, there is never a need to determine whether the user is a direct

customer or a travel agent. Because Lynch fails to disclose that claim feature, Lynch cannot,

therefore, anticipate Appellants' claimed invention.

C.   Rejection of Claims 1-28 Under 35 U.S.C. §103(a) as Allegedly Being
      Unpatentable Over Jones In View of Among

It is respectfully submitted that the combination of Jones and Among, either along or in

combination, fails to disclose at least the claim feature of determining whether the user is a direct

customer or a travel agent, as recited in independent claims 1, 13, 25, and 28.

1.   The Among Patent

As understood by the Appellants, Among is directed towards providing a database and

server that holds all of the various components a buyer may want to "mix and match" to produce

a desired, customized tour product. As disclosed in Among, a vendor can instantly confirm and

manage inventory for all selected sub-options of any components sold by the vendor, which

enables a quick and easy electronically ticketed transaction. The system of Among gives a

potential buyer the ability to instantly mix and match sub-options for various components, and

then easily mix and match additional sub-options for other components to compare price

conveniently. A buyer can book a customized tour product which includes multiple destinations.

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This capability allows for multiple air reservation bookings in conjunction with other "package" inventory such as hotel and car at each destination. [*See* Among, Abstract.]

2.   The Jones Patent

As understood by the Appellants, Jones is directed towards a travel system for processing travel requests based on a user's travel destination goal such as a meeting place and time. The travel system selects a destination terminal, if one is not provided, and estimates a travel time between the destination terminal and the destination goal. An itinerary is then built interactively with the user selecting air, bus or train transportation, ground transportation, and, optionally, hotels, restaurants, and activities. [*See* Jones, Abstract.]

3.   The Motivation to Combine Jones and Among is Legally
       Insufficient For Claims 1-27.

The Appellants respectfully submit that the combination of Jones with Among is wholly and completely improper. According to M.P.E.P. § 2143, to establish a *prima facie* case of obviousness, three basic criteria must be met. "First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." [M.P.E.P. § 2143] In other words, "[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. . . . See also *In re Lee*, 277 F.3d 1338, 1342-44, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002) (discussing the importance of relying on objective evidence and making specific factual findings with respect to the motivation to combine references); *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992)." [M.P.E.P. § 2143.01 (emphasis added)] Furthermore, "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also

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suggests the desirability of the combination." *In re Mills*, 916 F.2d 680, 682, 16 U.S.P.Q.2d 1430, 1432 (Fed. Cir. 1990).

On page 10 of the Final Office Action, the Examiner alleges that:

> [i]t would have been obvious to one of ordinary skill in the art at the time of the invention to combine the login teachings of Among with travel planning disclosure of Jones since, by identifying the user, the travel planning method and system of Jones can access special pricing information, any incentives, and commission payments that may be available to the user, thus affecting the price of any reservation, and also allows for tracing of sales by an individual or by an entity and aids travel agents in managing commission payments.

The allegation of obviousness in the Final Office Action, however, fails to provide any objective rationale from the references themselves for combining Jones with Among. Instead, to justify the combination, the Examiner merely repeats those advantages that the Appellants themselves have already previously presented in their specification [*See* present application, pages 4 (lines 13-27), 12 (lines 18-26), and 13 (lines 11-16).] Accordingly, this appears to be a classic case of hindsight reconstruction, which is impermissible ("The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure." M.P.E.P. § 2143, citing *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991) (emphasis added)).

Furthermore, the Final Office Action's stated motivation for combining Jones with Among is not legally sufficient because it does not lead to Appellants' claimed invention for at least two reasons. First, as taught by MPEP §2143.01(V), the proposed modification cannot render the prior art unsatisfactory for its intended purpose. "If [the] proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." MPEP §2143.01(V), citing *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). Jones teaches a goal oriented travel planning system. The stated purpose of Jones is to:

> [process] travel requests based on a user's travel destination goal.
> That is, <u>the user inputs a travel goal</u> (e.g., the time and location of
> a meeting) and the system automatically generates a travel
> itinerary, including flight information, hotel information . . . [and
> other pertinent travel information] <u>to ensure that the user</u>
> <u>accomplishes their travel goal</u> (e.g., arrives at meeting on time).

Jones, paragraph [00007] (emphasis added).

The system of Jones would be rendered unsatisfactory for its intended purpose if, instead of entering a user's travel itinerary, that of the travel agent was entered. Further still, even if the itinerary of the travel agent was not entered, but the system was modified to include means for determining whether the user is a direct customer or a travel agent, this still would render Jones unsatisfactory for its intended purpose because identifying the user as a direct client or travel agent provides no relevant information to the system of Jones. The system of Jones would not, as defined, make proper use of such information. Jones presumes the user is the traveling party, as is evident from the litany of personal travel information requested in paragraphs [0039-40], among others.

Further, as taught by M.P.E.P. §2143.01(VI), the proposed modification cannot change the principle of operation of a reference. "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." M.P.E.P. §2143.01(VI), citing *In re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (C.C.P.A. 1959). The Appellants respectfully submit that combining Jones and Among would change the principle of operation of Jones from being a goal oriented travel planning system for a user to an incentive based travel system that can determine whether the user is a direct customer or a travel agent. Consequently, it is respectfully submitted that the Examiner has not established a *prima facie* case of obviousness, and therefore the rejection of Claims 1-27 under 35 U.S.C. §103(a) is in error, and should be withdrawn.

The Examiner states that "the motivation [to combine Among and Jones] is found in the secondary (Among) reference [0052]" [Final Office Action, page 25.] The Examiner fails, however, to identify where such motivation is found, or what evidence provides such motivation.

Instead, as discussed above, Among is directed towards a system that provides a customized tour product. The focus of interest in Among is that the user is not a travel agent, but the end user of the travel services. Jones, alternatively, is directed towards a system that, upon receipt of manner different travel parameters (which clearly indicates use by the end user, not a travel agent), a detailed itinerary is determined and provided based on a user provided travel goal. Therefore, neither Jones nor Among is reasonably pertinent to the Appellants "field of endeavor," and the Appellants cite this as a further reason as to why it is improper to combine Jones and Among.

    4.   <u>The Combination of Jones and Among Fails to Disclose
Determination of Whether a User is a Direct Customer or a Travel
Agent of Independent Claims 1 and 13</u>

Even if one were to combine the two references as suggested by the Examiner, the rejection of the claims is still improper because the proposed combination of references does not disclose all of the limitations of all of the claims. To establish a *prima facie* case of obviousness, the prior art must disclose or suggest all of the limitations of the claims. *See In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

In reference to independent clams 1 and 13, as acknowledged by the Examiner, nowhere does Jones disclose the feature of determining whether the user is a direct customer or a travel agent. [Final Office Action, page 9.] The Examiner asserts that:

> Among discloses the step of determining ([during] login) who the
> user is, determining if a passenger is identified as qualified for
> special pricing and automatically applying a rate if qualified
> (Figure 4 step 407 If passenger identified as qualified for special
> pricing – rate is automatically applied), a customer information
> database (106) which includes client and customer information
> and identification [0039], allowing for tracking of sales by an

individual or by an entity, sending confirmation messages to travel
agent 605 and the buyer (606) and the ability to enroll online in an
incentive program and receives special access to the site via the
login and password which includes a travel agent [0052] (Figure 1
(102)(101) login, Figure 3 (300) customer inputs: resident state,
name, other login information; page 5 [0052]).

Final Office Action, page 9.

The Appellants respectfully submit that the cited passage of Among fails to disclose the
claim feature of determining whether the user is a direct customer or a travel agent. Referring to
Fig. 1, item 101 represents a customer login. In Fig. 3, item 300, the customer is directed to
input resident state, name and other login information. A careful inspection of Figs. 1 and 3, as
well as paragraphs [0039], and [0043-44] reveals that there is simply no mention whatsoever of
any means for determining whether the user is a direct customer or a travel agent. Finally, the
Examiner cites paragraph [0052] of Among, which is reproduced in its entirety below:

> Another embodiment of the present invention allows for the
> tracking of sales by an individual or by an entity. An individual
> may enroll online in an incentive program and receive special
> access to the site via a login name and password. In addition to
> receiving special offers from participating vendors, the members
> can track sales and receive incentive points for rewards and prizes.
> Travel agents can manage pending reservations, commission
> payments, cancellations and incentive points online, including a
> running tally of total incentive points earned and a list of potential
> rewards. Further, an organization or corporation may track sales
> to earn incentive rewards and prizes from the participating
> vendors, as well as monetary incentives based on a percentage of
> sales. All pertinent information is presented only to the specific
> entity logged in to the site with a valid login and password.

The foregoing passage indicates that Among teaches the use of an incentive program.
Each entity that uses the system of Among is given a password and login information. However,
Among fails to disclose any means for distinguishing between a direct customer and a travel
agent when making travel arrangements, in contrast with the Appellants' claimed invention.

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Thus, the Appellants respectfully submit that Among and Jones, taken either alone or in combination, fail to disclose the claim feature of determining whether the user is a direct customer or a travel agent as recited in independent claims 1 and 13. Because the cited combination of references fails to disclose each and every claim feature as required, it is respectfully submitted that the rejection of claims 1 and 13 under 35 U.S.C. §103(a) is in error.

The Examiner again repeats the assertion that "the fact that the user is a direct user or a travel agent in the claim language above is determined to be non-functional descriptive data, not structurally related to the steps or the structure. Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability..." [Final Office Action, page 10.] This is a naked assertion, with no basis in either fact or law. Having addressed the issue of non-functional descriptive data in detail above, the Appellants, for the purpose of brevity, will not address it again here.

Dependent claims 2-12, and 14-24, variously depend from independent claims 1 and 13, and are, therefore, patentably distinguishable over the combination of Jones and Among for at least those reasons stated above with regard to independent claims 1 and 13.

     5.   The Combination of Jones and Among Fails to Disclose All of the
            Claim Features of Dependent Claims 2-12 and 14-24.

      a.   Dependent Claims 2 and 14.

In reference to claims 2 and 14, the Examiner asserts that the claim language of "one or more categories of airfare" is interpreted to display "component prices of a package are shown, e.g., a total package price includes the cost of a room at a certain dollar amount and the cost of flight at a specified dollar amount." [Final Office Action, page 11.] The Examiner then asserts that, "Among discloses the individual package component prices . . ." and cites Fig. 4 (401-406) and paragraph [0045], for support. Respectfully, the Appellants disagree.

Paragraph [0045] of Among is repeated below:

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FIG. 4 illustrates a method for a buyer to purchase a tour package according to the preferred embodiment of the present invention. After the buyer has provided parameter information for components 400 and selected the desired components 401, suboptions are generated and priced by the server 105 for the selected components from the airline, hotel, car and other travel products/services price databases 402, 403, 404, 405. The information is sent to the server for compilation 104, which returns with the lowest priced options 408. If the passenger is identified as qualified for special pricing (such as a resident of Hawaii) the pricing rate is automatically applied to the qualifying travel suboptions 407.

Among, paragraph [0045] (emphasis added).

Accordingly, Among teaches that the server compiles the suboption prices, and then returns a "lowest priced option(s) 408 (there could be returned two, three or more lowest priced options). Therefore, a complete package price is returned; not a breakdown of "individual package component prices," as the Examiner asserts. The last line of paragraph [0045] further supports this reasoning by stating that special pricing rates are applied to "qualifying suboptions 407," indicating that still only the lowest priced option(s) are returned. By contrast, even assuming *arguendo* that the Examiner's interpretation of claims 2 and 14 is correct, Among still fails to disclose the claim feature of "pricing information . . . with one or more categories of airfare."

As stated above, to establish a *prima facie* case of obviousness, the prior art must disclose or suggest all of the limitations of the claims. *See In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Therefore, because the combination of Jones and Among fail to disclose all of the claims features of dependent claims 2 and 14, the rejection under 35 U.S.C. §103(a) is improper and should be withdrawn.

b.   Dependent Claims 4 and 16.

In reference to claims 4 and 16, it is respectfully submitted that the combination of Jones and Among fails to disclose the claim feature of the listing providing information relating to

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whether children are allowed at the named accommodation. As admitted in the Final Office Action on page 12, Jones and Among fail to disclose the claim feature of the listing providing information relating to whether children are allowed at the named accommodation. Because the cited combination of references fails to disclose each and every claim feature as required, it is respectfully submitted that the rejection of claims 4 and 16 under 35 U.S.C. §103(a) is in error and should be withdrawn.

Finally, the Examiner again repeats the assertion "that the travel parameter includes whether children are allowed is determined to be non-functional descriptive data, not functionally related to the steps or method." [Final Office Action, page 12.] For the same reasons as discussed above with respect to the issue of non-functional descriptive data, the Appellants, respectfully submit that this argument is not sufficient to sustain a finding of obviousness.

     c.   Dependent Claims 6 and 18.

In reference to claims 6 and 18, it is respectfully submitted that the combination of Jones and Among fails to disclose the claim feature of the pricing information associated with the one or more categories of airfare being provided without regard to availability of seating. As admitted in the Final Office Action on page 14, Jones and Among fail to disclose the claim feature of said pricing information associated with the one or more categories of airfare is provided without regard to availability of seating. Because the cited combination of references fails to disclose each and every claim feature as required, it is respectfully submitted that the rejection of claims 6 and 18 under 35 U.S.C. §103(a) is in error and should be withdrawn.

The Examiner again repeats the assertion that "the data in the listing is determined to be non-functional descriptive data, not structurally related to the steps or the structure." [Final Office Action, page 14.] For the same reasons as discussed above with respect to the issue of non-functional descriptive data, the Appellants respectively submit that this argument is not sufficient to sustain a finding of obviousness.

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d.   Dependent Claims 7 and 19.

In reference to claims 7 and 19, it is respectfully submitted that the combination of Jones and Among fails to disclose the claim feature of accessing an associated computer network to determine the availability of seating, after selection of a listed travel arrangement. As admitted in the Office Action on page 15, Jones and Among fail to disclose the claim feature of accessing an associated computer network to determine the availability of seating, after selection of a listed travel arrangement. Because the cited combination of references fails to disclose each and every claim feature as required, it is respectfully submitted that the rejection of claims 7 and 19 under 35 U.S.C. §103(a) is in error and should be withdrawn.

e.   Dependent Claims 12 and 24.

In reference to claims 12 and 24, it is respectfully submitted that the combination of Jones and Among fails to disclose the claim feature of generating a confirmed travel arrangement without receipt of payment for the travel arrangement, the confirmed travel arrangement including information relating to a net amount of money due from the user, wherein when the user is a travel agent, the net amount of money due is reduced by an amount of an agency commission. The Examiner cites paragraph [0056] of Jones as allegedly teaching the features of claims 12 and 14.

FIG. 7 depicts a flow chart of the steps performed by the reservation confirmation system (RCS) 128, which allows a user to review an itinerary. Once the itinerary is complete, RCS 128 sends display data to presentation program 108 which in turn displays the itinerary for the user to review (step 700). The user indicates using input device 105 whether the itinerary is acceptable (step 710). If the itinerary is not acceptable, the user may alter the itinerary and reenter any of the decision subsystems (step 720). If the itinerary is acceptable, RCS 128 places the itinerary along with the associated restaurant, the maps and any other available information in a trip portfolio for printing, faxing or e-mailing or delivering to the user using any means desired by the user (step 730).

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Paragraph [0056] fails to disclose the claim features of means for generating a confirmed travel arrangement without receipt of payment for the travel arrangement, the confirmed travel arrangement including information relating to a net amount of money due from the user, wherein when the user is a travel agent, the net amount of money due is reduced by an amount of agency commission. Instead, paragraph [0056] merely discusses the use of an itinerary, which can be altered by a user, and for which is provided additional information, including maps and/or restaurants. There is absolutely no discussion or mention of generating a confirmed travel arrangement that includes a net amount of money due, and if the user is a travel agent, that the net among due is reduced by a commission.

Because the cited combination of references fails to disclose each and every claim feature as required, it is respectfully submitted that the rejection of claims 12 and 24 under 35 U.S.C. §103(a) is in error and should be withdrawn.

6. The Combination of Jones and Among Fails to Disclose a First Data Processing System for Determining Whether the User is a Direct Customer or a Travel Agent and Other Features of Dependent Claims 25-27.

In reference to claims 25 through 27, it is respectfully submitted that the combination of Jones and Among fails to disclose the claim features of a first data processing system for determining whether the user is a direct customer or a travel agent, a polling computer for polling the first data processing system to transfer travel arrangement information to a second data processing system and a third data processing system (claim 26), and wherein the second data processing system is a central reservation system, and said third data processing system if a flight data server (claim 27). Because the cited combination of references fails to disclose each and every claim feature as required, it is respectfully submitted that the rejection of claims 25 through 27 under 35 U.S.C. §103(a) is in error and should be withdrawn.

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7. The Motivation to Combine Jones and Among is Legally
    Insufficient for Claim 28.

The Appellants respectfully submit that the combination of Jones with Among is wholly and completely improper. The arguments set forth in Section 3 above apply equally here in regard to claim 28, and as such, shall not be repeated again for the purpose of brevity.

8. Combination of Jones and Among Fails to Disclose Determination
    Whether a User is a Direct Customer or a Travel Agent in
    Independent Claim 28.

In reference to claim 28, it is respectfully submitted that the combination of Jones and Among fails to disclose the claim feature of determining whether the user is a direct customer or a travel agent. The arguments set forth above in Section 4 in regard to claims 1 and 13 apply equally as well here, and thus shall not be repeated for the sake of brevity.

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VIII.   <u>Conclusion</u>

For the reasons presented above, the rejections of the claims are not properly founded in the patent statutes and should be reversed.
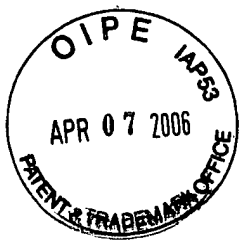
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Customer No.: 27160

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IX.   APPENDIX A: The Appealed Claims

1. A reservation system for making travel arrangements upon request by a user, the system comprising:

      means for determining whether the user is a direct customer or a travel agent;

      means for receiving travel parameters associated with a desired travel option;

      means for generating a listing of one or more travel arrangements in accordance with the travel parameters, said listing including pricing information associated with each respective travel arrangement; and

      means for displaying the listing of the one or more travel arrangements.

2. A reservation system according to claim 1, wherein said listing includes a plurality of room accommodations, pricing information for the plurality of room accommodations, and pricing information for the plurality of room accommodations with one or more categories of airfare.

3. A reservation system according to claim 2, wherein said reservation system includes means for displaying images associated with the plurality of room accommodations, in response to selection of said plurality of room accommodations.

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4. A reservation system according to claim 1, wherein said travel parameters includes accommodation name, arrival date, departure date, departure location, and number of guests, and wherein said listing includes information relating to whether children are allowed at the named accommodation.

5. A reservation system according to claim 1, wherein said listing indicates unavailability information associated with the travel arrangement, said unavailability information including dates of unavailability.

6. A reservation system according to claim 2, wherein said pricing information associated with the one or more categories of airfare is provided without regard to availability of seating.

7. A reservation system according to claim 6, wherein said reservation system further includes:

means for accessing an associated computer network to determine the availability of seating, after selection of a listed travel arrangement.

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8. A reservation system according to claim 7, wherein said reservation system includes means for displaying one or more flight options after the associated computer network is accessed.

9. A reservation system according to claim 8, wherein said displayed one or more flight options includes an indication of a limited flight availability.

10. A reservation system according to claim 8, wherein said reservation system includes means for displaying price information and adjusted price information associated with the travel arrangements.

11. A reservation system according to claim 3, wherein said travel parameters include departure date and departure location, wherein dates associated with the airfare are determined in accordance with the departure date and departure location.

12. A reservation system according to claim 11, wherein said reservation system includes means for generating a confirmed travel arrangement without receipt of payment for the travel arrangement, the confirmed travel arrangement including information relating to a net amount of money due from the user, wherein when the user is a travel agent, the net amount of money due is reduced by an amount of an agency commission.

13. A method for making travel arrangements upon request by a user of a computer network, the method comprising:

determining whether the user is a direct customer or a travel agent;

receiving travel parameters associated with a desired travel option;

generating a listing of one or more travel arrangements in accordance with the travel parameters, said listing including pricing information associated with each respective travel arrangement; and

displaying the listing of the one or more travel arrangements.

14. A method according to claim 13, wherein said listing includes a plurality of room accommodations, pricing information for the plurality of room accommodations, and pricing information for the plurality of room accommodations with one or more categories of airfare.

15. A method according to claim 14, wherein said method further comprises displaying images associated with the plurality of room accommodations, in response to selection of said plurality of room accommodations.

16. A method according to claim 13, wherein said travel parameters includes

accommodation name, arrival date, departure date, departure location, and number of guests, and

wherein said listing includes information relating to whether children are allowed at the named

accommodation.

17. A method according to claim 13, wherein said listing indicates unavailability

information associated with the travel arrangement, said unavailability information including

dates of unavailability.

18. A method according to claim 14, wherein said pricing information associated with

the one or more categories of airfare is provided without regard to availability of seating.

19. A method according to claim 18, wherein said method further comprises accessing

an associated computer network to determine the availability of seating, after selection of a listed

travel arrangement.

20. A method according to claim 19, wherein said method further comprises displaying

one or more flight options after the associated computer network is accessed.

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21. A method according to claim 20, wherein said displayed one or more flight options includes an indication <u>of</u> a limited flight availability.

22. A method according to claim 20, wherein said method further comprises displaying price information and adjusted price information associated with the travel arrangements.

23. A method according to claim 15, wherein said travel parameters include departure date and departure location, wherein dates associated with the airfare are determined in accordance with the departure date and departure location.

24. A method according to claim 23, wherein said method further comprises generating a confirmed travel arrangement without receipt of payment for the travel arrangement, the confirmed travel arrangement including information relating to a net amount of money due from the user, wherein when the user is a travel agent, the net amount of money due is reduced by an amount of an agency commission.

25. A reservation system for making travel arrangements upon request by a user, the system comprising:

a first data processing system for determining whether the user is a direct customer or a travel agent, receiving travel parameters associated with a desired travel option, generating a

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listing of one or more travel arrangements in accordance with the travel parameters, said listing

including pricing information associated with each respective travel arrangement, and displaying

the listing of the one or more travel arrangements; and

at least one database for storing a plurality of the travel arrangements and the associated

pricing information.

26. A reservation system according to claim 25, wherein said reservation system further

includes a polling computer for polling the first data processing system to transfer travel

arrangement information to a second data processing system and a third data processing system.

27. A reservation system according to claim 26, wherein said second data processing

system is a central reservation system, and said third data processing system is a flight data

server.

28. A method for making travel arrangements upon request by a user of a computer

network, the method comprising:

determining whether the user is a direct customer or a travel agent;

receiving travel parameters associated with a desired travel option;

generating a listing of one or more travel arrangements in accordance with the travel

parameters, said listing including pricing information associated with each respective travel

arrangement;

displaying the listing of the one or more travel arrangements;

generating a confirmed travel arrangement without receipt of payment for the travel

arrangement, the confirmed travel arrangement including information relating to a net amount of

money due from the user, wherein when the user is a travel agent, the net amount of money due

is reduced by an amount of an agency commission; and

forwarding, to a tour operator's reservation system, the confirmed travel arrangement.

X.   <u>APPENDIX B: Evidence</u>

None.

XI.   <u>APPENDIX C: Related Proceedings</u>

None.